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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,345	07/25/2003	George R. Borden IV	7146.0153	2320
7590	07/28/2004		EXAMINER	
Kevin L. Russell Chernoff, Vilhauer, McClung & Stenzel, LLP 1600 ODS Tower 601 S.W. Second Avenue Portland, OR 97204-3157			ROSWELL, MICHAEL	
			ART UNIT	PAPER NUMBER
			2173	
			DATE MAILED: 07/28/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/627,345	BORDEN, GEORGE R.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael Roswell	2173	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 October 2003.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-10 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 02 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20031020</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Specification***

Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

The abstract of the disclosure is objected to because it fails to describe the merits of the invention. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The “non-overlapping data” recited in the claim is critical or essential to the practice of the invention, but is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Non-overlapping data is not well known in the art or sufficiently described in the specification as to enable one of ordinary skill to make and use the invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language..

Claims 1 and 3-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Zirngibl et al (US Patent 6,587,547), Hereinafter Zirngibl.

Regarding claim 1, Zirngibl discloses an interactive voice service similar to applicant's claimed aural user interface. Zirngibl teaches a hierachal structure of data, taught as the use of XML-based language for the composition of Active Voice pages, which “contain data at various hierachal levels”, at col. 4, lines 60-64. Zirngibl further teaches a first input that permits the selection of a first set of data of a first level of a hierarchical structure and provides a first speech based audio output in response to the selection of a first set of data, taught as the selection of one of the “menu options” of the telecast and the subsequent audio output “thank

you, etc." found at col. 10, lines 53-59. Zirngibl also teaches a second input that permits the selection of a second set of data of a second level of a hierarchical structure, where the first level and the second level are different, and provides a second speech based audio output in response to the selection of the second set of data, taught as the "menu options" of the telecast and the subsequent audio output "thank you, etc." found at col. 10, lines 53-59. Furthermore, Zirngibl teaches a third input that permits the selection of one of the first set of data when the first level is selected and the third input permits the selection of one of the second set of data when the second level is selected, taught as the selection from a sub menu called after the selection from the main menu options, and the subsequent audio response, at col. 10, lines 60-67 and col. 11, lines 1-2.

Regarding claim 3, Zirngibl teaches different buttons for the first, second, and third inputs, taught as the use of "1" for a first input, "2" for a second, and the use of "3" and "4" in the submenu of the third input, at col. 10, lines 53-67.

Regarding claim 4, since the aural output of Zirngibl is speech output, it is inherent that the audio output in response to a third input has a variable frequency, as speech has a naturally varying frequency.

Regarding claim 5, Zirngibl discloses an interactive voice service similar to applicant's claimed aural user interface. Zirngibl teaches a hierachal structure of data, taught as the use of XML-based language for the composition of Active Voice pages, which "contain data at various hierachal levels", at col. 4, lines 60-64. Zirngibl further teaches a first input that permits the selection of a first set of data of a first level of a hierarchical structure and provides a first

speech based audio output in response to the selection of a first set of data, taught as the selection of one of the “menu options” of the telecast and the subsequent audio output “thank you, etc.” found at col. 10, lines 53-59. Zirngibl also teaches a second input that permits the selection of a second set of data of a second level of a hierarchical structure, where the first level and the second level are different, and provides a second speech based audio output in response to the selection of the second set of data, taught as the “menu options” of the telecast and the subsequent audio output “thank you, etc.” found at col. 10, lines 53-59. Furthermore, Zirngibl teaches a third input that permits the selection of one of the first set of data when the first level is selected and the third input permits the selection of one of the second set of data when the second level is selected, taught as the selection from a sub menu called after the selection from the main menu options, and the subsequent audio response, at col. 10, lines 60-67 and col. 11, lines 1-2. Since the aural output of Zirngibl is speech output, it is inherent that the audio output in response to an input has a variable frequency, as speech has a naturally varying frequency.

Regarding claim 6, Zirngibl has been shown *supra* to teach the use of XML documents for the composition of voice pages, at col. 7, lines 7-13, and navigation between levels of the structure of such documents, at col. 10, lines 46-67.

Regarding claim 7, Zirngibl discloses an interactive voice service similar to applicant’s claimed aural user interface. Zirngibl teaches a hierachal structure of data, taught as the use of XML-based language for the composition of Active Voice pages, which “contain data at various hierachal levels”, at col. 4, lines 60-64. Zirngibl further teaches a first input that permits the selection of a first set of data of a first level of a hierarchical structure and provides a first

speech based audio output in response to said selection of said first set of data, taught as the selection of one of the “menu options” of the telecast and the subsequent audio output “thank you, etc.” found at col. 10, lines 53-59. Zirngibl also teaches a second input that permits the selection of a second set of data of a second level of a hierarchical structure, where the first level and the second level are different, and provides a second speech based audio output in response to the selection of the second set of data, the first speech based audio output being indicative of a higher level of the hierarchical structure than the second speech based audio output, taught as the “menu options” of the telecast and the subsequent audio output of “thank you, etc.” found at col. 10, lines 53-59. Furthermore, Zirngibl teaches a third input that permits the selection of one of the first set of data when the first level is selected and the third input permits the selection of one of the second set of data when the second level is selected, taught as the selection from a sub menu called after the selection from the main menu options, and the subsequent audio response, at col. 10, lines 60-67 and col. 11, lines 1-2. Since the aural output of Zirngibl is speech output, it is inherent that the audio output in response to an input has a variable frequency, as speech has a naturally varying frequency.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zirngibl.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the interactive voice services of Zirngibl to produce a desired speech output in response to a user input. Applicant has not disclosed how audio outputs "in", "out", and "next" provide an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the responses disclosed by Zirngibl because applicant's claimed audio output does help to change the way menus are navigated in the system of Zirngibl.

Therefore, it would have been obvious to one of ordinary skill in the art to modify the teachings of Zirngibl to obtain the invention as specified in claims 8-10.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The art relates to aural user interfaces created from hierachal data structures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Roswell whose telephone number is (703) 305-5914. The examiner can normally be reached on 8:30 - 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca can be reached on (703) 308-3116. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Roswell  
7/13/2004



CAO (KEVIN) NGUYEN  
PRIMARY EXAMINER